would be a total mistake. I want to reiterate the fact that it would be a violation of the law.

Therefore, I come to the floor today to introduce a bill that serves as an emphatic restatement of that law, making its consequences more certain.

Furthermore, I am introducing this language as an amendment to the current appropriations bill, that will clarify that no taxpayer dollars can be used to fund UNESCO. We must slam the door on any speculation of any kind of backdoor financial support for the United Nations agencies that grant membership to Palestine. This bill is exactly that. There is no reason why this purposeful reinstatement of existing law should not have bipartisan support. The threat to prospects for negotiated, just, and lasting peace that is posed by this recent Palestinian tactic is more tangible now than in the past. Our determination to discourage such a dangerous tactic should be stronger than ever.

I ask that my colleagues join in support of this legislation that makes it clear to UNESCO, the United Nations, Israel, the Palestinian Authority, and clear to the rest of the world that the United States will not tolerate attempts to admit the Palestinian Authority and undercut negotiated peace efforts in the Middle East.

I am hoping we will have a vote on this to once again reaffirm our determined commitment to live by the laws we have passed and to not allow an agency of the United Nations or any part of the United Nations be used to grant statesmanship and nationhood to an entity that has not qualified for that. I hope this reaffirmation will also put to rest any speculation or any attempts to circumvent the laws that exist on the books.

I yield the floor.

Mrs. FEINSTEIN. I note the absence of a quorum.

The PRESIDING OFFICER (Mr. CASEY). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators allowed to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

BUSINESS-METHOD PATENTS

Mr. KYL. Mr. President, I ask unanimous consent to have printed in the RECORD a letter concerning section 18 of the America Invents Act, sent to me and others by the chairman of the House Judiciary Committee.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC September 8, 2011.

Hon. JON KYL
U.S. Senate,
Washington, D.C.
Hon. CHARLES E. SCHUMER,
U.S. Senate,
Washington, D.C.
Hon. PATRICK LEAHY,
U.S. Senate,
Washington, D.C.
Hon. CHUCK GRASSLEY,
U.S. Senate,
Washington, D.C.

DEAR SENATORS KYL, SCHUMER, LEAHY AND GRASSLEY: I am writing to discuss further the importance of the transitional program for business method patents as included in H.R. 1249, the Leahy-Smith America Invents Act. As you know, this provision enables the U.S. Patent and Trademark Office ('USPTO') to correct egregious errors that were made in the granting of a wide range of business method patents.

Business methods were generally not patentable in the United States before the late 1990s, and generally are not patentable elsewhere in the world. The Federal Circuit, however, created this new class of patents in its 1998 State Street decision. In its 2010 decision in Bilski v. Kappos, the U.S. Supreme Court clamped down on the patenting of business methods and other patents of poor quality. It is likely that many or most of the business method patents that were issued after State Street are now invalid under Bilski.

There really is no sense in allowing expensive litigation over patents that are no longer valid in light of the Supreme Court's clarification of the law. The new transitional program included in the House bill creates an inexpensive and speedy alternative to litigation—allowing parties to resolve these disputes more efficiently rather than spending millions of dollars in litigation costs. In the process, the proceeding will also prevent nuisance litigation settlements.

Moreover, the new administrative proceeding allows business method patents to be reviewed by the experts at the USPTO under the correct (Bilski) standard. To use this proceeding, a challenger must make an upfront showing to the USPTO of evidence that the business method patent is more likely than not invalid. This is a high standard. Only the worst patents, which probably never should have been issued, will be eligible for review in this proceeding.

This program provides the Patent Office with a fast, precise vehicle to review low-quality business method patents, which the Supreme Court has acknowledged are often abstract and overly broad.

Specifically, the bill's provision applies to patents that describe a series of steps used to conduct every-day business applications in the financial products and retail services sectors. These are patents that can be and have been asserted against all types of businesses—from community banks and credit unions to retailers and businesses of all sizes and from all industries.

The provision is, indeed, limited to patents that are non-technological in nature (i.e., business methods) and that involve a process or related apparatus used in the practice, administration, or management of a financial product or service. The program's exception for ''technological inventions'' precludes review of patents for inventions based on application of the natural sciences or related engineering or inventions in computer operations. And by requiring that the covered patents be applicable to a financial product or service, the proceeding in the House bill ensures that the patents eligible for review will generally include only those that have some business or commercial orientation.

Nothing in the bill, however, limits use of the proceeding to one industry; rather, it applies to non-technological patents that can apply to financial products or services. Any business that sells or purchases goods or services ''practices'' or ''administers'' a financial service by conducting such transactions. Most business-method patents are fairly plastic in nature and could apply to a whole host of business activities. See 157 Cong. Rec. 1363, 1365 (daily ed. March 8, 2011) (statement of Sen. Schumer) (''To meet this requirement, the patent need not recite a specific financial product or service. Rather the patent claims must only be broad enough to cover a financial product or service.''). To be sure, the fact that a patent has been asserted against a financial institution with respect to products or processes that are unique to such institutions will be a fairly clear indicator that the patent applies to a ''financial product or service,'' and should provide guidance to the USPTO in administering the program. See 157 Cong. Rec. 1368, 1379 (daily ed. March 8, 2011) (statement of Sen. Kyl).

The transitional program can be used to review patents for ''a method or a corresponding apparatus.'' The distinction between a ''process'' and a ''machine'' (two of the terms used in section 101 of the patent code to define what is patentable) is not a firm one, and many inventions can be characterized either way. A ''corresponding apparatus'' for a business method would include, for example, a computer that was programmed to carry out the business process. Wary of the stigma that attaches to business-method patents, many applicants try to obscure the nature of these patents by characterizing a computer that has been programmed to execute the process as the invention, and thus asserting that the process is really a ''machine'' or a ''system.''

The program's definition of ''covered business-method patent'' includes a ''corresponding apparatus'' in order to prevent such obvious evasions. Any other approach would elevate claim-drafting form over invention substance. Finally, any ''apparatus'' that is subject to review under the program would need to be used to implement or effect a business method. Legitimate inventions in technological fields will not be subject to review under this program.

The transitional program also extends to privies of parties charged with infringement. This was done specifically to prevent downstream customers or users from being dragged into frivolous litigation over suspect or improperly granted patents. H.R. 1249 also extends the time frame for the transitional program. This change is important to prevent patent trolls from waiting out the program. This issue of folks ''lying in wait'' may actually be a significant argument for extending or making permanent this program in the future. Similarly, the program's definition was expanded in H.R. 1249 so that it is not limited to class 705 patents. This change is key to the program's success, because many business method patents are assigned to classes other than 705, and it makes no sense to exclude them because of the quirks of USPTO's classification regime.

This program is not tied to one industry or sector of the economy—it affects everyone. The provision as developed in the Senate and later perfected in the House will ensure that the vast majority of non-technological business method patents will be eligible for review under this program. As the USPTO had a presumption to grant many of these erroneous patents, they should now have a presumption to allow most non-technological